

THE HON'BLE SRI JUSTICE Dr. SHAMEEM AKTHER

M.A.C.M.A.No. 2070 OF 2006

JUDGMENT:

None appeared for respondent Nos. 1 and 3 in spite of service of notice. Notice sent to respondent No. 2 returned un-served. However, appearance of respondent No. 2 – owner of the vehicle is of no consequence to decide the quantum of compensation in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it is held that

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

2. The case and contention of learned counsel for the appellant is that this appeal is filed under Section 173 of the Motor Vehicles Act, 1988, by the appellant, who is the petitioner in M.V.O.P.No. 104 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, East Godavari at Kakinada (for short, 'the Tribunal'), to enhance the compensation from Rs.1,64,007/- to Rs.5,00,000/- stating that the Tribunal has not granted adequate, just and reasonable compensation; the Tribunal did not grant just and reasonable compensation on the scores pain and suffering and mental agony; though the petitioner suffered 25% permanent disability, the

¹ 2001(1) ALT 495 (D.B.)

Tribunal granted only Rs.25,000/- and only Rs.2,000/- for extra nourishment and, therefore, prayed to grant compensation of Rs.5,00,000/- in total.

3. On the other hand, learned counsel appearing for respondent No. 3 contended that the Tribunal has appreciated all the oral and documentary evidence on record and granted compensation to the petitioner on all scores in total Rs.1,64,007/- which is just and reasonable and that there are no grounds to enhance the compensation.

4. In view of the rival contentions put forth by both learned counsel, the point for determination is

"Whether the compensation of Rs.1,64,007/- is just and reasonable?"

5. As far as the contention with regard to rashness and negligence on the part of respondent No. 1, the driver of crime vehicle bearing No. KA 04 M 9732, is concerned, the evidence of P.Ws.1 and 2 and the documents marked as Ex.A1, attested Xerox copy of FIR in crime No. 33 of 2000 of II Town L&O Police Station, Kakinada, and Ex.A2, attested Xerox copy of wound certificate, clearly establish the same. The Tribunal has determined the same in favour of the appellant by relying on evidence. There is nothing to substitute any other opinion.

6. As far as the compensation awarded to the petitioner is concerned, the Tribunal has granted compensation of Rs.1,64,007/- on the following heads:

(i)	Compensation towards 3 grievous injuries		
	@ Rs.5,000/- each	:	Rs. 15,000-00/-
(ii)	Compensation towards 4 simple injuries		
	@ Rs.1,000/- each	:	Rs. 4,000-00/-
(iii)	Compensation towards medical treatment		
	as per bills Rs.1,13,006-67 ps.	:	Rs.1,13,006-67/-
(iv)	Compensation towards 25% disability	:	Rs. 25,000-00/-
(v)	Extra nourishment	:	Rs. 2,000-00/-
(vi)	Pain and suffering and mental agony	:	Rs. 5,000-00/-

	TOTAL	:	Rs.1,64,006-67/-

7. The evidence of P.W.1 reveals that he filed the petition claiming compensation of Rs.5,00,000/- for the injuries suffered by him in a motor accident. In the accident, he sustained multiple grievous injuries. Immediately, he was admitted in GGH, Kakinada. He further stated that he sustained fractures to his right leg and left shoulder. He suffered injuries all over his body. Three major operations were performed and rods were inserted. He was in-patient in hospital for 15 days. He also took treatment in a private hospital by name Satya Seshu Nursing Home, Kakinada. He spent Rs.2,00,000/- towards medical expenses. He was an employee in G.F.C.L. Due to the accident, he was on leave for four months. He was drawing a salary of Rs.8,000/- per month. On the date of deposition, he was going to work by spending Rs.100/- per day towards auto charges. Through his evidence, Exs.A1 to A8 are marked. In cross-examination, he reiterated the same and denied that he was deposing false.

8. P.W.2, Dr. Y.Venkateswararao, deposed that he treated the petitioner for the following injuries:

- (i) Crush injury of right leg,
- (ii) Abrasion over right forearm,
- (iii) Contusion over left eyebrow,
- (iv) Laceration over right heel,
- (v) Fracture of right tibia,
- (vi) Fracture of right fibula and
- (vii) Fracture of left collar bone.

P.W.2 further deposed that on 13-03-2000, tibia fracture was fixed with fixator. On 14-03-2000, clavicle bone was fixed with belt. The petitioner was discharged from hospital on 27-03-2000. Injuries 1 to 4 are simple and injuries 5 to 7 are grievous. Ex.X1 is case sheet. The petitioner appeared before Medical Board. He examined the petitioner on 01-07-2004 and disability was assessed at 25%. There were stiffness of right ankle joint, right knee joint, left shoulder joint and shortening of right leg. Ex.A5 is disability certificate issued by the board.

9. The evidence of P.W.3 reveals that he was running private hospital. The petitioner was admitted in his hospital on 28-03-2000 for the treatment of wound infection due to compound fracture of both bones of right knee. On 10-07-2000, the petitioner was discharged. Ex.A6 is bunch of medical bills issued by him. The patient is still under treatment. In cross-examination, it was denied that he was deposing false.

10. As seen from the evidence of P.Ws.1 to 3, the petitioner suffered injuries as deposed by P.W.2. There is no reason for P.Ws.2 and 3 to depose false with regard to the injuries suffered by the petitioner and the treatment taken by him. All the documents marked on behalf of the petitioner corroborated his testimony

and in those circumstances, it can safely be concluded that the petitioner suffered multiple injuries as deposed by P.W.2. It can also safely be concluded that the petitioner was in-patient in the hospital of P.W.3 between 28-03-2000 and 10-07-2000 and he issued Ex.A6 and that, therefore, Ex.A6 bills cannot be doubted. While awarding compensation, the Tribunal has granted Rs.15,000/- only for the three grievous injuries suffered by the petitioner. As seen from **Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another**², the petitioner can be granted an amount of Rs.20,000/- for each grievous injury. Accordingly, the petitioner is granted an amount of Rs.60,000/- on this score. As seen from the award, the Tribunal has granted Rs.4,000/- for four simple injuries which is also a meagre amount. The petitioner can be granted an amount of Rs.16,000/- for the four simple injuries. The evidence of P.W.2 and Ex.A5 disability certificate clearly prove that the petitioner had suffered 25% disability but by taking this into consideration, the Tribunal has granted only Rs.25,000/-. Learned counsel for the petitioner-appellant contended that the monthly income has to be taken into consideration and the relevant multiplier in **Sarla Verma (supra)** required to be taken to award compensation on the score of the petitioner-appellant suffering 25% disability. As seen from the record, the petitioner was working as male nurse in Godavari Fertilizers and he was drawing salary of Rs.8,000/- per month. To award compensation as claimed by the petitioner, there is no permanent loss of earnings. However, the amount granted by the Tribunal is not adequate. Therefore, it is required to be enhanced. So far for the 25% disability suffered by the petitioner and shortening of leg by ½", an amount of Rs.75,000/- can be granted to meet the ends of justice. There is evidence that the petitioner was in hospital for considerable time. As per the evidence of P.W.3, the petitioner was in hospital for about 4 months. Therefore,

² (2009) 6 SCC 121

it can safely be concluded that the petitioner could not discharge his duties for a period of 4 months. On this score, an amount of Rs.20,000/- is granted towards loss of earnings. It is also pertinent to note that the Tribunal has granted a meagre amount of Rs.2,000/- towards extra nourishment, which is required to be enhanced since the petitioner was hospitalised for four months and thereafter also he required some money on this score. Taking this into account, it is just and reasonable to grant compensation of Rs.20,000/- which includes dependent charges also. The amount granted by the Tribunal on other scores *i.e.* pain and suffering and mental agony is retained. Therefore, in all, the petitioner now is entitled to the compensation of Rs.3,09,007/- (*i.e.* enhanced to Rs.3,09,007/- from Rs.1,64,007/-). So far as the rate of interest is concerned, the Tribunal granted 6% interest on the amount awarded. Now, the settled law is that interest can be granted @ 7.5% per annum. Therefore, the petitioner is granted interest @ 7.5% p.a. on the enhanced amount of compensation from the date of petition till realization. The conditions with regard to tagging liability *etc.*, are remained unchanged. The petitioner-appellant is permitted to withdraw the entire amount of compensation.

11. The appeal is, accordingly, allowed in part. Pending miscellaneous petitions, if any, in this appeal shall stand closed in consequence. No costs.

Date: 02-02-2017.
JSK

Dr. SHAMEEM AKTHER, J.